

MILLENNIUM CHALLENGE COMPACT

BY AND BETWEEN

**THE UNITED STATES OF AMERICA,
ACTING THROUGH THE
MILLENNIUM CHALLENGE CORPORATION,**

AND

THE GOVERNMENT OF THE REPUBLIC OF HONDURAS

Millennium Challenge Compact

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MILLENNIUM CHALLENGE COMPACT

This MILLENNIUM CHALLENGE COMPACT (the "*Compact*") is made by and between the United States of America, acting through the Millennium Challenge Corporation, a United States Government corporation ("*MCC*"), and the Government of the Republic of Honduras (the "*Government*") (referred to herein individually as a "*Party*" and collectively, the "*Parties*"). A compendium of capitalized terms defined herein is included in Exhibit A attached hereto.

RECITALS

WHEREAS, MCC, acting through its Board of Directors, has selected the Republic of Honduras as eligible to present to MCC a proposal for the use of 2004 and 2005 Millennium Challenge Account ("*MCA*") assistance to help facilitate poverty reduction through economic growth in Honduras;

WHEREAS, the Government has carried out a consultative process with the country's private sector and civil society to outline the country's priorities for the use of MCA assistance and developed a proposal, which was submitted to MCC on August 20, 2004 (the "*Proposal*");

WHEREAS, the Proposal focused on, among other things, increasing the productivity and competitiveness of small- and medium-size farms and reducing transportation costs;

WHEREAS, MCC has evaluated the Proposal and related documents to determine whether the Proposal is consistent with core MCA principles and includes proposed activities and projects that will advance the progress of Honduras towards achieving economic growth and poverty reduction; and

WHEREAS, based on MCC's evaluation of the Proposal and related documents and subsequent discussions and negotiations between the Parties, the Government and MCC determined to enter into this Compact to implement a program using MCC Funding to advance Honduras's progress towards economic growth and poverty reduction (the "*Program*");

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I.

PURPOSE AND TERM

Section 1.1 Objectives. The Parties have identified the following objectives (each, an "*Objective*" and together, the "*Objectives*") of this Compact, each of which is (i) key to advancing the goal of economic growth and poverty reduction in Honduras (the "*Compact Goal*"), and (ii) described in more detail in the Annexes attached hereto:

(a) Increase the productivity and business skills of farmers who operate small- and medium-size farms and their employees (the "*Agricultural Objective*"); and

(b) Reduce transportation costs between targeted production centers and national, regional and global markets (the "*Transportation Objective*").

The Government expects to achieve, and shall use its best efforts to ensure the achievement of, these Objectives during the Compact Term.

Section 1.2 Projects. The Annexes attached hereto describe the specific projects and the policy reforms and other activities related thereto (each, a "*Project*") that the Government will carry out, or cause to be carried out, in furtherance of this Compact to achieve the Objectives and the Compact Goal.

Section 1.3 Entry into Force; Compact Term. This Compact shall enter into force on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that all conditions set forth in Section 4.1 have been satisfied by the Government and MCC (such date, the "*Entry into Force*"). This Compact shall remain in force for five (5) years from the Entry into Force, unless earlier terminated in accordance with Section 5.4 (the "*Compact Term*").

ARTICLE II. FUNDING AND RESOURCES

Section 2.1 MCC Funding.

(a) MCC's Contribution. MCC hereby grants to the Government, subject to the terms and conditions of this Compact, an amount not to exceed Two Hundred and Fifteen Million United States Dollars (USD\$215,000,000) ("*MCC Funding*") during the Compact Term to enable the Government to implement the Program and achieve the Objectives.

(i) The allocation of the MCC Funding within the Program and among and within the Projects shall be as generally described in Annex II or as otherwise agreed upon by the Parties from time to time.

(ii) If at any time MCC determines that a condition precedent to an MCC Disbursement has not been satisfied, MCC may, upon written notice to the Government, reduce the total amount of MCC Funding by an amount equal to the amount estimated in the applicable Spending Plan for the Program or Project activity for which such condition precedent has not been met. Upon the expiration or termination of this Compact, (A) any amounts of MCC Funding not disbursed by MCC to the Government shall be automatically released from any obligation in connection with this Compact and (B) any amounts of MCC Funding disbursed by MCC to the Government as provided in Section 2.1(b)(i), but not re-disbursed as provided in Section 2.1(b)(ii) or otherwise incurred as permitted pursuant to Section 5.4(e) prior to the expiration of the Compact, shall be returned to MCC in accordance with Section 2.5(a)(ii).

(b) Disbursements.

(i) Disbursements of MCC Funding. MCC shall from time to time make disbursements of MCC Funding (each such disbursement, an "*MCC Disbursement*") to a Permitted Account or through such other mechanism as agreed by the Parties in accordance with

the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(ii) Re-Disbursements of MCC Funding. The release of MCC Funding from a Permitted Account (each such release, a "*Re-Disbursement*") shall be made in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(c) Interest. Unless the Parties agree otherwise in writing, any interest or other earnings on MCC Funding that accrue or are earned (collectively, "*Accrued Interest*") shall be held in a Permitted Account and accrue or be earned in accordance with the requirements for the treatment of Accrued Interest as specified in Annex I or any relevant Supplemental Agreement. On a quarterly basis and upon the termination or expiration of this Compact, the Government shall return, or ensure the return of, all Accrued Interest to any United States Government account designated by MCC.

(d) Conversion: Exchange Rate. The Government shall ensure that all MCC Funding in a Permitted Account into which MCC Disbursements are made is held in the currency of the United States of America ("*United States Dollars*") prior to Re-Disbursement; *provided*, that a certain portion of MCC Funding may be transferred to a Local Account and may be held in such Local Account in the currency of the Republic of Honduras prior to Re-Disbursement in accordance with the requirements of Annex I. To the extent that any amount of MCC Funding held in United States Dollars must be converted into the currency of the Republic of Honduras for any purpose, including for any Re-Disbursement or any transfer of MCC Funding into a Local Account, the Government shall ensure that such amount is converted consistent with Annex I and the requirements of the Disbursement Agreement or any other Supplemental Agreement between the Parties. The Government shall ensure that any MCC Funding that is converted into the currency of the Republic of Honduras is converted at the rate and in the manner set forth in Annex I.

(e) Guidance. From time to time, MCC may provide guidance to the Government through Implementation Letters on the frequency, form and content of requests for MCC Disbursements and Re-Disbursements or any other matter relating to MCC Funding. The Government shall apply such guidance in implementing this Compact.

Section 2.2. Government Resources.

(a) The Government shall provide, or cause to be provided, such Government funds and other resources, and shall take, or cause to be taken, such actions, including obtaining all necessary approvals and consents, as are specified in this Compact or in any Supplemental Agreement to which the Government is a party or as are otherwise necessary and appropriate to effectively carry out the Government Responsibilities or other responsibilities or obligations of the Government under or in furtherance of this Compact during the Compact Term and through the completion of any post-Compact Term activities, audits or other responsibilities.

(b) If at any time during the Compact Term, the Government materially reduces the allocation in its national budget, or any other Honduran government authority at a departmental, municipal, regional or other jurisdictional level materially reduces the allocation of its respective

budget, of the normal and expected resources that the Government or such other governmental authority, as applicable, would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein, the Government shall notify MCC in writing within fifteen (15) days of such reduction, such notification to contain information regarding the amount of the reduction, the affected activities, and an explanation for the reduction. In the event that MCC independently determines upon review of the executed national annual budget that such a material reallocation or reduction of resources has occurred, MCC shall notify the Government and, following such notification, the Government shall provide a written explanation for such reallocation or reduction and MCC may reduce the total amount of MCC Funding or any MCC Disbursement by an amount equal to the amount estimated in the applicable Spending Plan for the activity for which funds were reduced or reallocated.

(c) The Government shall use its best efforts to ensure that all MCC Funding is fully reflected and accounted for in the annual budget of the Republic of Honduras on a multi-year basis.

Section 2.3 Limitations on the Use or Treatment of MCC Funding:

(a) Abortions and Involuntary Sterilizations. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is subject to prohibitions on use of funds contained in (i) paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)-(3)), a United States statute, which prohibitions shall apply to the same extent and in the same manner as such prohibitions apply to funds made available to carry out Part I of such Act; or (ii) any provision of law comparable to the eleventh and fourteenth provisos under the heading "Child Survival and Health Programs Fund" of division E of Public Law 108-7 (117 Stat. 162), a United States statute.

(b) United States Job Loss or Displacement of Production. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, including:

(i) Providing financial incentives to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(ii) Supporting investment promotion missions or other travel to the United States with the intention of inducing United States firms to relocate a substantial number of United States jobs or a substantial amount of production outside the United States;

(iii) Conducting feasibility studies, research services, studies, travel to or from the United States, or providing insurance or technical and management assistance, with the intention of inducing United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(iv) Advertising in the United States to encourage United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(v) Training workers for firms that intend to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(vi) Supporting a United States office of an organization that offers incentives for United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States; or

(vii) Providing general budget support for an organization that engages in any activity prohibited above.

(c) Military Assistance and Training. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support the purchase or use of goods or services for military purposes, including military training, or to provide any assistance to the military, police, militia, national guard or other quasi-military organization or unit.

(d) Prohibition of Assistance Relating to Environmental, Health or Safety Hazards. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard. Unless MCC and the Government agree otherwise in writing, the Government shall ensure that activities undertaken or funded in whole or in part, directly or indirectly, by MCC Funding comply with environmental guidelines delivered by MCC to the Government or posted by MCC on its website or otherwise publicly made available, as such guidelines may be amended from time to time (the "*Environmental Guidelines*"), including any definition of "likely to cause a significant environmental, health, or safety hazard" as may be set forth in such Environmental Guidelines.

(e) Taxation.

(i) Taxes. As required by applicable United States law and in furtherance of the General Agreement for Economic Cooperation between the Government of the United States of America and the Government of Honduras, dated May 27, 1961, as amended from time to time (the "*Bilateral Agreement*"), the Government shall ensure that the Program, any Program Assets, MCC Funding and Accrued Interest, shall be free from any taxes imposed under laws currently or hereafter in effect in the Republic of Honduras during the Compact Term. This exemption shall (A) be implemented in an administratively efficient manner consistent with the principles that MCC Funding will be used only to fund the Program and to achieve the Objectives and to avoid, where possible, double taxation of Providers, irrespective of their nationality and place of residence and (B) apply to any use of any Program Asset, MCC Funding and Accrued Interest, including any Exempt Uses, and to any work performed under or activities undertaken in furtherance of this Compact by any person or entity (including contractors and grantees) funded by MCC Funding, and shall apply to all taxes, tariffs, duties, and other levies (each, a "*Tax*" and collectively, "*Taxes*"), including:

(1) to the extent attributable to MCC Funding, income taxes and other taxes on profit or businesses imposed on organizations or entities, other than nationals of the Republic of Honduras, receiving MCC Funding, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in Honduras, or any other tax, duty, charge or fee of

whatever nature, except fees for specific services rendered; for purposes of this Section 2.3(e), the term "national" refers to organizations established under the laws of Honduras, other than MCA-Honduras or any other entity established solely for purposes of managing or overseeing the implementation of the Program or any wholly-owned subsidiaries, divisions, or Affiliates of entities not registered or established under the laws of Honduras;

(2) customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services or the personal belongings and effects, including personally-owned automobiles, for Program use or the personal use of individuals who are neither citizens nor permanent residents of the Republic of Honduras and who are present in Honduras for purposes of carrying out the Program or their family members, including all charges based on the value of such imported goods;

(3) taxes on the income or personal property of all individuals who are neither citizens nor permanent residents of the Republic of Honduras, including income and social security taxes of all types and all taxes on the personal property owned by such individuals, to the extent such income or property are attributable to MCC Funding; and

(4) taxes or duties levied on the purchase of goods or services funded by MCC Funding, including sales taxes, tourism taxes, value-added taxes (VAT), or other similar charges.

(ii) This Section 2.3(e) shall apply, but is not limited to (A) any transaction, service, activity, contract, grant or other implementing agreement funded in whole or in part by MCC Funding; (B) any supplies, equipment, materials, property or other goods (referred to herein collectively as "goods") or funds introduced into, acquired in, used or disposed of in, or imported into or exported from, the Republic of Honduras by MCC, or by any person or entity (including contractors and grantees) or employees of any thereof, as part of, or in conjunction with, MCC Funding or the Program; and (C) any contractor, grantee, or other organization, and any employee thereof, carrying out activities funded in whole or in part by MCC Funding (the uses set forth in clauses (A) through (C) are collectively referred to herein as "*Exempt Uses*").

(iii) If a Tax has been levied and paid contrary to the requirements of this Section 2.3(e), whether inadvertently, due to the impracticality of implementation of this provision with respect to certain types or amounts of taxes or otherwise, the Government shall refund the amount of such tax to a Permitted Account designated by MCA-Honduras, subject to MCC approval, in the currency of the Republic of Honduras, within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified of such levy and tax payment; *provided, however*, the Government shall apply national funds to satisfy its obligations under this paragraph and no MCC Funding, Accrued Interest or any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part by MCC Funding ("*Program Assets*") may be applied by the Government in satisfaction of its obligations under this paragraph.

(iv) The Parties shall memorialize in a mutually acceptable Supplemental Agreement or other suitable document the mechanisms for implementing this Section 2.3(e), including (A) a formula for determining refunds for Taxes paid, the amount of which is not susceptible to precise determination, (B) a mechanism for ensuring the tax-free importation, use,

and re-exportation of goods, services or the personal belongings of individuals (including all Providers) described in paragraph (i)(2) of this Section 2.3(e), and (C) any other appropriate Government action to facilitate the administration of this Section 2.3(e).

(f) Alteration. The Government shall ensure that no MCC Funding, Accrued Interest, or Program Assets shall be subject to any impoundment, rescission, sequestration or any provision of law now or hereafter in effect in the Republic of Honduras that would have the effect of requiring or allowing any impoundment, rescission or sequestration of any MCC Funding, Accrued Interest, or Program Asset.

(g) Liens or Encumbrances. The Government shall ensure that no MCC Funding, Accrued Interest, or Program Assets shall be subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each, a "*Lien*"), except with the prior approval of MCC in accordance with Section 3(c) of Annex I, and in the event of any Lien not so approved, the Government shall seek the release of such Lien and shall pay any amounts owed to obtain such release; *provided, however*, the Government shall apply national funds to satisfy its obligations under this Section 2.3(g) and no MCC Funding, Accrued Interest, or Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.3(g).

(h) Other Limitations. The Government shall ensure that the use or treatment of MCC Funding shall be subject to such other limitations (i) as required by the applicable law of the United States of America now or hereafter in effect during the Compact Term, (ii) as advisable under or required by applicable United States Government policies now or hereafter in effect during the Compact Term, or (iii) to which the Parties may otherwise agree in writing.

(i) Utilization of Goods, Services and Works. The Government shall ensure that any Program Assets, services, facilities or works funded in whole or in part, directly or indirectly, by MCC Funding, unless otherwise agreed by the Parties in writing, shall be used solely in furtherance of this Compact.

(j) Notification of Applicable Laws and Policies. MCC shall notify the Government of any applicable United States law or policy affecting the use or treatment of MCC Funding, whether or not specifically identified in this Section 2.3, and shall provide to the Government a copy of the text of any such applicable law and a written explanation of any such applicable policy.

Section 2.4 Incorporation; Notice; Clarification.

(a) The Government shall include, or ensure the inclusion of, all of the requirements set forth in Section 2.3 in all Supplemental Agreements to which MCC is not a party and shall use its best efforts to ensure that no such Supplemental Agreement is implemented in violation of the prohibitions set forth in Section 2.3.

(b) The Government shall ensure notification of all of the requirements set forth in Section 2.3 to any Provider and all relevant officers, directors, employees, agents, representatives, Affiliates, contractors, grantees, subcontractors and sub-grantees of the Government or any Provider. The term "*Provider*" shall mean (i) MCA-Honduras and any other Government Affiliate involved in any activities in furtherance of this Compact or (ii) any third

party who receives at least USD \$50,000 in the aggregate of MCC Funding (other than employees of MCA-Honduras) during the Compact Term or such other amount as the Parties may agree in writing, whether directly from MCC, indirectly through Re-Disbursements, or otherwise.

(c) In the event the Government or any Provider requires clarification from MCC as to whether an activity contemplated to be undertaken in furtherance of this Compact violates or may violate any provision of Section 2.3, the Government shall notify, or ensure that such Provider notifies, MCC in writing and provide in such notification a detailed description of the activity in question. In such event, the Government shall not proceed, and shall use its best efforts to ensure that no relevant Provider proceeds, with such activity, and the Government shall ensure that no Re-Disbursements shall be made for such activity, until MCC advises the Government or such Provider in writing that the activity is permissible.

Section 2.5 Refunds; Violation.

(a) Notwithstanding the availability to MCC, or exercise by MCC, of any other remedies, including under international law, this Compact, or any Supplemental Agreement:

(i) If any amount of MCC Funding, Accrued Interest, or any Program Asset, is used for any purpose prohibited under this Article II or otherwise in violation of any of the terms and conditions of this Compact, any guidance in any Implementation Letter, or any Supplemental Agreement between the Parties, MCC may require the Government to repay promptly to MCC to an account designated by MCC or to others as MCC may direct, the amount of such misused MCC Funding, Accrued Interest, or the cash equivalent of the value of any misused Program Asset, in United States Dollars, plus any interest that accrued or would have accrued thereon, within fifteen (15) days after the Government is notified, whether by MCC or otherwise, of such prohibited use; *provided, however*, the Government shall apply national funds to satisfy its obligations under this Section 2.5(a)(i) and no MCC Funding, Accrued Interest, or Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.5(a)(i); and

(ii) If all or any portion of this Compact is terminated or suspended and upon the expiration of the Compact, the Government shall, subject to the requirements of Sections 5.4(e) and 5.4(f), refund, or ensure the refund, to MCC to such account(s) as designated by MCC the amount of any MCC Funding, plus any Accrued Interest, promptly, but in no event later than thirty (30) days after the Government receives MCC's request for such refund; *provided*, if this Compact is terminated or suspended in part, MCC may request a refund for only the amount of funds, plus any Accrued Interest, then allocated to the terminated or suspended portion; *provided, further*, that any refund of MCC Funding or Accrued Interest shall be to such account(s) as designated by MCC.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 2.5 for a refund shall continue during the Compact Term and for a period of (i) five (5) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

(c) If MCC determines that any activity or failure to act violates, or may violate, any Section in this Article II, MCC may refuse any further MCC Disbursements for or conditioned upon such activity, and may take any action to prevent any Re-Disbursement related to such activity.

ARTICLE III. IMPLEMENTATION

Section 3.1 Implementation Framework. This Compact shall be implemented by the Parties in accordance with this Article III and as further specified in the Annexes and in relevant Supplemental Agreements.

Section 3.2 Government Responsibilities.

(a) The Government shall have principal responsibility for oversight and management of the implementation of the Program (i) in accordance with the terms and conditions specified in this Compact and relevant Supplemental Agreements, (ii) in accordance with all applicable laws then in effect of Honduras, and (iii) in a timely and cost-effective manner and in conformity with sound technical, financial and management practices (collectively, the "*Government Responsibilities*"). Unless otherwise expressly provided, any reference to the Government Responsibilities or any other responsibilities or obligations of the Government herein shall be deemed to apply to any Government Affiliate and any of their respective employees, contractors, agents or representatives.

(b) The Government shall ensure that no person or entity shall participate in the selection, award, administration, or oversight of a contract, grant or other benefit or transaction funded in whole or in part, directly or indirectly, by MCC Funding, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial interest or (ii) the person is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the Government the conflict of interest and, following such disclosure, the Parties agree in writing to proceed notwithstanding such conflict. The Government shall ensure that no person or entity involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part, directly or indirectly, by MCC Funding shall solicit or accept from, offer to a third party, or seek or be promised, directly or indirectly, for itself or for another person or entity, any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time.

(c) The Government shall designate MCA-Honduras to implement the Government Responsibilities and any other responsibilities or obligations of the Government and to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties (referred to herein collectively as "*Designated Rights and Responsibilities*"), in accordance with the terms and conditions set forth in this Compact or such Supplemental Agreement. Notwithstanding any provision herein or any other agreement to the contrary, such designation shall not relieve the Government of such Designated Rights and Responsibilities, for

which the Government shall retain ultimate responsibility. The Government shall cause MCA-Honduras to perform such Designated Rights and Responsibilities in the same manner and to the full extent to which the Government is obligated to perform such Designated Rights and Responsibilities and shall ensure that MCA-Honduras does not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any person or entity without the prior written consent of MCC.

(d) The Government shall, upon a request from MCC, execute, or ensure the execution of, an assignment to MCC of any cause of action which may accrue to the benefit of the Government, MCA-Honduras or any other Government Affiliate in connection with or arising out of any activities funded in whole or in part, directly or indirectly, by MCC Funding.

(e) The Government shall ensure that (i) no decision of MCA-Honduras is modified, supplemented, unduly influenced or rescinded by any other governmental authority, except by a non-appealable judicial decision, and (ii) the authority of MCA-Honduras shall not be expanded, restricted or otherwise modified, except in accordance with this Compact, applicable law, the Governance Regulations or a Supplemental Agreement between the Parties.

(f) The Government shall ensure that all persons and individuals that enter into agreements to provide goods, services or works under the Program or in furtherance of this Compact shall do so in accordance with the Procurement Guidelines and shall obtain all necessary immigration, business and other permits, licenses, consents or approvals to enable them and their personnel to fully perform under such agreements.

Section 3.3 Government Deliveries. The Government shall proceed, and cause others to proceed, in a timely manner to deliver to MCC all reports, notices, documents or other deliveries by the Government under or as required to be delivered by the Government under this Compact or any Supplemental Agreement between the Parties, in form and substance as set forth in this Compact or in any such Supplemental Agreement.

Section 3.4 Government Assurances. The Government hereby provides the following assurances to MCC that as of the date this Compact is signed:

(a) The information contained in the Proposal and any agreement, report, statement, communication, document or otherwise delivered or otherwise communicated to MCC by or on behalf of the Government on or after the date of the submission of the Proposal (i) are true, accurate and complete in all material respects and (ii) do not omit any fact known to the Government that if disclosed would (A) alter in any material respect the information delivered, (B) likely have a material adverse effect on the Government's ability to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of this Compact, or (C) have likely adversely affected MCC's determination to enter into this Compact or any Supplemental Agreement between the Parties.

(b) Unless otherwise disclosed in writing to MCC, the MCC Funding made available hereunder is in addition to the normal and expected resources that the Government usually receives or budgets for the activities contemplated herein from external or domestic sources.

(c) This Compact does not conflict and will not conflict with any international agreement or obligation to which the Government is a party or by which it is bound.

(d) No payments have been (i) received by any official of the Government or any other government body in connection with the procurement of goods or services to be undertaken or funded in whole or in part, directly or indirectly, by MCC Funding, except fees, taxes, or similar payments legally established in Honduras or (ii) made to any third party, in connection with or in furtherance of this Compact, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a *et seq.*).

Section 3.5 Implementation Letters; Supplemental Agreements.

(a) MCC may, from time to time, issue one or more letters to furnish additional information or guidance to assist the Government in the implementation of this Compact (each, an "*Implementation Letter*"). The Government shall apply such guidance in implementing this Compact.

(b) The details of any funding, implementing and other arrangements in furtherance of this Compact may be memorialized in one or more agreements between (A) the Government (or any Government Affiliate) and MCC, (B) MCC and/or the Government (or any Government Affiliate) and any third party, including any of the Providers or (C) any third parties where neither MCC nor the Government is a party, before, on or after the Entry into Force (each, a "*Supplemental Agreement*"). The Government shall deliver, or cause to be delivered, to MCC within five (5) days of its execution a copy of any Supplemental Agreement to which MCC is not a party.

Section 3.6 Procurement; Awards of Assistance.

(a) The Government shall ensure that the procurement of all goods, services and works by the Government, MCA-Honduras or any other Provider in furtherance of this Compact shall (i) conform to the terms and conditions reflected in a Supplemental Agreement between the Parties (the "*Procurement Agreement*"), and (ii) be governed by the standards and procedures of the World Bank, as codified in "*Guidelines: Procurement under IBRD Loans and IDA Credits*, May 2004 (ISBN 0-8213-5829-4)" (covering works and goods) and "*Guidelines: Selection and Employment of Consultants by World Bank Borrowers*, May 2004" (covering consultants and technical assistance), subject to the exceptions and other modifications specified in additional procurement guidelines set forth in the Procurement Agreement, as amended by MCC from time to time by publication (such World Bank standards and such published MCC guidelines are collectively, the "*Procurement Guidelines*"). The Procurement Guidelines shall include the following requirements:

(i) Open, fair and competitive procedures are used in a transparent manner to solicit, award and administer contracts, grants, and other agreements and to procure goods, services and works;

(ii) Solicitations for goods, services, and works shall be based upon a clear and accurate description of the goods, services or works to be acquired;

(iii) Contracts shall be awarded only to qualified and capable contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost effective and timely basis; and

(iv) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, shall be paid to procure goods, services, and works.

(b) The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, records regarding the receipt and use of goods and services acquired in furtherance of this Compact, the nature and extent of solicitations of prospective suppliers of goods and services acquired in furtherance of this Compact, and the basis of award of contracts, grants and other agreements in furtherance of this Compact.

(c) The Government shall use its best efforts to ensure that information, including solicitations, regarding procurement, grant and other agreement actions funded in whole or in part, directly or indirectly, by MCC Funding shall be made publicly available in the manner outlined in the Procurement Guidelines or in any other manner agreed upon by the Parties in writing.

(d) No goods, services or works may be funded in whole or in part, directly or indirectly, by MCC Funding which are procured pursuant to orders or contracts firmly placed or entered into prior to the Entry into Force, except as the Parties may otherwise agree in writing.

(e) In furtherance of the Procurement Guidelines, the Government shall ensure that MCA-Honduras adopts a procurement operations manual, subject to MCC approval, no later than the time specified in the Disbursement Agreement. The procurement operations manual shall be consistent with the Procurement Guidelines and may draw from relevant sections of active World Bank loan agreement operations manuals currently governing other programs in Honduras and/or the "Bank Funded Procurement Manual," as published by the World Bank's Procurement Policy and Services Group, Operations Policy and Country Services division.

(f) The Government shall ensure that MCA-Honduras follows, and uses its best efforts to ensure that all Providers follow, the Procurement Guidelines in procuring goods, services and works and in awarding and administering contracts, grants and other agreements in furtherance of this Compact and shall furnish MCC evidence of the adoption of the Procurement Guidelines by MCA-Honduras no later than the time specified in the Disbursement Agreement.

(g) The Government shall include, or ensure the inclusion of, the requirements of this Section 3.6 into all Supplemental Agreements between the Government, MCA-Honduras or any other Government Affiliate or any of their respective directors, officers, employees, Affiliates, contractors, representatives or agents, on the one hand, and a Provider, on the other hand.

Section 3.7 Policy Performance; Policy Reforms. In addition to the specific policy and legal reform commitments identified in Annex I and the Schedules thereto, the Government shall seek to maintain and improve its level of performance under the policy criteria identified in Section 607 of the Millennium Challenge Act of 2003, as amended (the "*Act*"), and the MCA selection

criteria and methodology published by MCC pursuant to Section 607 of the Act from time to time ("*MCA Eligibility Criteria*").

Section 3.8 Records and Information; Access; Audits; Reviews.

(a) Reports and Information. The Government shall furnish to MCC, and shall use its best efforts to ensure that all Providers and any other third party receiving MCC Funding, as appropriate, furnish to the Government, any records and other information required to be maintained under this Section 3.8 and such other information, documents and reports as may be necessary or appropriate for the Government to effectively carry out its obligations under this Compact, including under Section 3.12.

(b) Government Books and Records. The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, accounting books, records, documents and other evidence relating to this Compact adequate to show, without limitation, the use of all MCC Funding, including all costs incurred by the Government and the Providers in furtherance of this Compact, the receipt and use of goods and services acquired in furtherance of this Compact by the Government and the Providers, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods and services acquired by the Government and the Providers in furtherance of this Compact, the basis of award of Government and other contracts and orders in furtherance of this Compact, the overall progress of the implementation of the Program, and any documents required by this Compact or any Supplemental Agreement between the Parties or reasonably requested by MCC upon reasonable notice ("*Compact Records*"). The Government shall maintain, and shall use its best efforts to ensure that all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with the prior written approval by MCC, other accounting principles, such as those (1) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (2) then prevailing in Honduras. Compact Records shall be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) Access. The Government shall permit, or cause to be permitted, authorized representatives of MCC; the Inspector General, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or MCA-Honduras to conduct any assessment, review or evaluation of the Program, at all reasonable times the opportunity to audit, review, evaluate or inspect activities funded, in whole or in part, directly or indirectly, by MCC Funding or undertaken in connection with the Program, the utilization of goods and services purchased or funded in whole or in part, directly or indirectly, by MCC Funding, and Compact Records, including of the Government or any Provider, relating to activities funded or undertaken in furtherance of, or otherwise relating to, this Compact, and shall use its best efforts to ensure access by MCC, the Inspector General, the United States Government Accountability Office or relevant auditor, reviewer or evaluator or their respective representatives or agents to all relevant directors, officers, employees, Affiliates, contractors, representatives and agents of the Government or any Provider.

(d) Audits.

(i) Government Audits. In addition to its audit responsibilities set forth in Annex I, the Government shall, on at least an annual basis and as the Parties may otherwise agree in writing, conduct, or cause to be conducted, financial audits of all MCC Disbursements and Re-Disbursements during the year since the Entry into Force or since the prior anniversary of the Entry into Force in accordance with the following terms, except as the Parties may otherwise agree in writing. As requested by MCC in writing, the Government shall use, or cause to be used, an auditor named on the approved list of auditors in accordance with the "*Guidelines for Financial Audits Contracted by Foreign Recipients*" issued by the Inspector General of the United States Agency for International Development (the "*Inspector General*"), and as approved by MCC, to conduct such annual audits. Such audits shall be performed in accordance with such Guidelines and be subject to quality assurance oversight by the Inspector General in accordance with such Guidelines. An audit shall be completed and delivered to MCC no later than 90 days after the first period to be audited and no later than 90 days after each anniversary of the Entry into Force, or such other period as the Parties may otherwise agree in writing.

(ii) Audits of U.S. Entities. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States nonprofit organization, on the other hand, state that the United States organization is subject to the applicable audit requirements contained in OMB Circular A-133, notwithstanding any other provision of this Compact to the contrary. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, state that the United States organization is subject to audit by the cognizant United States Government agency, unless the Government and MCC agree otherwise in writing.

(iii) Audit Plan. The Government shall submit, or cause to be submitted, to MCC no later than 20 days prior to its adoption, a plan for the audit of the expenditures of any Covered Providers, which audit plan the Government shall adopt, or cause to be adopted, in form and substance as approved by MCC, no later than sixty (60) days prior to the end of the first period to be audited.

(iv) Covered Provider. A "*Covered Provider*" is (A) any non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD \$300,000 or more of MCC Funding in any MCA-Honduras fiscal year or any other non-U.S. person or entity that receives, directly or indirectly, USD \$300,000 or more of MCC Funding from any Provider in such fiscal year or (B) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD \$500,000 or more of MCC Funding in any MCA-Honduras fiscal year or any other United States person or entity that receives, directly or indirectly, USD \$500,000 or more of MCC Funding from any Provider in such fiscal year.

(v) Corrective Actions. The Government shall use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of its own records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(vi) Audit Reports. The Government shall furnish, or use its best efforts to cause to be furnished, to MCC an audit report in a form satisfactory to MCC for each audit required by this Section 3.8, other than audits arranged for by MCC, no later than 90 days after the end of the period under audit, or such other time as may be agreed by the Parties from time to time.

(vii) Other Providers. For Providers who receive MCC Funding under this Compact pursuant to direct contracts or agreements with MCC, MCC shall include appropriate audit requirements in such contracts or agreements and shall, on behalf of the Government, unless otherwise agreed by the Parties, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(viii) Audit by MCC. MCC retains the right to perform, or cause to be performed, the audits required under this Section 3.8 by utilizing MCC Funding or other resources available to MCC for this purpose, and to audit, conduct a financial review, or otherwise ensure accountability of any Provider or any other third party receiving MCC Funding, regardless of the requirements of this Section 3.8.

(e) Application to Providers. The Government shall include, or ensure the inclusion of, at a minimum, the requirements of:

(i) Paragraphs (a), (b), (c), (d)(iii), (d)(vi), (d)(viii) and (e) of this Section 3.8 into all Supplemental Agreements between the Government, any Government Affiliate, MCA-Honduras or any of their respective directors, officers, employees, Affiliates, contractors, representatives or agents (each, a "*Government Party*"), on the one hand, and a Covered Provider that is not a non-profit organization domiciled in the United States, on the other hand;

(ii) Paragraphs (a), (b), (c), and (d)(viii) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Provider that does not meet the definition of a Covered Provider; and

(iii) Paragraphs (a), (b), and (c) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Covered Provider that is a non-profit organization domiciled in the United States.

(f) Reviews or Evaluations. The Government shall conduct, or cause to be conducted, such performance reviews, data quality reviews, environmental audits, or program evaluations during the Compact Term in accordance with the M&E Plan or as otherwise agreed in writing by the Parties.

(g) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to finance the costs of any Audits, reviews or evaluations required under this Compact, including as reflected on Exhibit A to Annex II, and in no event shall the Government be responsible for the costs of any such Audits, reviews or evaluations from financial sources other than MCC Funding.

Section 3.9 Insurance; Performance Guarantees; Indemnification Claims.

(a) Insurance; Performance Guarantees. The Government shall, to MCC's satisfaction, insure or cause to be insured all Program Assets, and obtain or cause to be obtained such other appropriate protections against risks or liabilities associated with the operations of the Program, by requiring Providers to obtain adequate insurance and post adequate performance bonds or other guarantees. MCA-Honduras shall be named as the insured party on any such insurance and the beneficiary of any other such guarantee, including performance bonds. The Government shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss of Program Assets or to pursue the procurement of the covered goods or services, and otherwise shall be deposited in a Permitted Account as designated by MCA-Honduras, subject to MCC approval.

(b) Indemnification Claims. To the extent MCA-Honduras is held liable under any indemnification or other similar provision of any agreement between MCA-Honduras, on the one hand, and any other Provider or other third party, on the other hand, the Government shall pay in full on behalf of MCA-Honduras any such obligation; *provided, however*, the Government shall apply national funds to satisfy its obligations under this Section 3.9 and no MCC Funding, Accrued Interest or Program Assets may be applied by the Government in satisfaction of its obligations under this Section 3.9. If the Government believes in good faith that such liability is not caused primarily by the negligence or misconduct of MCA-Honduras or another Government Party, the Government shall so notify MCC in writing within fifteen (15) business days after such belief is formed, which notice shall contain sufficient information for MCC to independently assess the accuracy of the Government's position. If, within fifteen (15) business days after receiving such notice, MCC determines, in its sole discretion, that such liability is not caused primarily by the negligence or misconduct of MCA-Honduras or another Government Party, MCC will authorize MCA-Honduras, in writing, to use MCC Funding to fund such liability or refund to the Government the payment of the same.

Section 3.10 Domestic Requirements. The Government shall proceed in a timely manner to seek any required ratification of this Compact or similar domestic requirement, which process the Government shall initiate promptly after the conclusion of this Compact. Notwithstanding anything to the contrary in this Compact, this Section 3.10 shall provisionally apply prior to the Entry into Force.

Section 3.11 No Conflict. The Government shall undertake not to enter into any agreement in conflict with this Compact or any Supplemental Agreement during the Compact Term.

Section 3.12 Reports. The Government shall provide to MCC within thirty (30) days of any written request by MCC, or as otherwise agreed in writing by the Parties, the following information:

- (a) The name of each entity to which MCC Funding has been provided;
- (b) The amount of MCC Funding provided to such entity;
- (c) A description of the Program and each Project funded in furtherance of this Compact, including:

- (i) A statement of whether the Program or any Project was solicited or unsolicited; and
- (ii) A detailed description of the objectives and measures for results of the Program or Project;
- (d) The progress made by Honduras toward achieving the Compact Goal and Objectives;
- (e) A description of the extent to which MCC Funding has been effective in helping Honduras to achieve the Compact Goal and Objectives;
- (f) A description of the coordination of MCC Funding with other United States foreign assistance and other related trade policies;
- (g) A description of the coordination of MCC Funding with assistance provided by other donor countries;
- (h) Any report, document or filing that the Government, MCA-Honduras, or any other Government Affiliate submits to any government body in connection with this Compact;
- (i) Any report or document required to be delivered to MCC under the Environmental Guidelines, any audit plan, or any component of the Implementation Plan; and
- (j) Any other report, document or information requested by MCC or required by this Compact or any Supplemental Agreement between the Parties.

ARTICLE IV.

CONDITIONS PRECEDENT; DELIVERIES

Section 4.1 Conditions Prior to the Entry into Force and Deliveries. As conditions precedent to the Entry into Force, the Parties shall satisfy the following:

- (a) The Government (or mutually acceptable Government Affiliate) and MCC shall execute a Disbursement Agreement, which agreement shall be in full force and effect as of the Entry into Force;
- (b) The Government (or mutually acceptable Government Affiliate) and MCC shall execute one or more term sheets that set forth the material and principal terms and conditions of each of the Supplemental Agreements identified in Exhibit B attached hereto (the "*Supplemental Agreement Term Sheets*");
- (c) The Government (or mutually acceptable Government Affiliate) and MCC shall execute a Procurement Agreement, which agreement shall be in full force and effect as of the Entry into Force;
- (d) The Government shall deliver a letter signed and dated by the Principal Representative of the Government certifying: